

HOUSE BILL 237

By Dunn

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 5; Title 5; Title 6 and Title 68, to enact the "Property Assessed Clean Energy Act."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, is amended by adding the following language as a new chapter:

68-204-101. This chapter shall be known and may be cited as the "Property Assessed Clean Energy Act."

68-204-102. For the purposes of this chapter:

(1) "Local government" means any county, metropolitan government, municipality, or other political subdivision of the state;

(2) "PACE program" or "program" means a property assessed clean energy program established under this chapter;

(3) "Qualified improvement" means a permanent improvement fixed to real property and intended to decrease or offset water or energy consumption or demand, including a product, a device, or an interacting group of products or devices that uses energy technology to generate electricity, provide thermal energy, regulate temperature, or increase energy efficiency;

(4) "Qualified project" means the installation or modification of a qualified improvement;

(5) "Real property" means privately owned commercial or industrial real property or residential real property; and

(6) "Region" means a PACE region designated under § 68-204-105.

68-204-103.

(a) A local government may impose an assessment to repay the financing of qualified projects on real property located in a region, as designated pursuant to § 68-204-105.

(b) An assessment may not be imposed to repay the financing of:

(1) Facilities for undeveloped lots or lots undergoing development at the time of the assessment; or

(2) The purchase or installation of products or devices not permanently fixed to real property.

(c) A local government may impose the assessment only after entering into a written contract with the record owner of the real property to be assessed.

68-204-104.

(a) A local government may establish a PACE program and exercise all powers granted under this chapter.

(b) A local government that establishes a program may enter into a written contract with a record owner of real property in a region to impose an assessment to repay the owner's financing of a qualified project on the owner's property. The financing to be repaid through assessments may be provided by a third party or, if authorized by the program, by the local government.

(c) If the program provides for third-party financing, the local government official authorized to enter into a written contract with a property owner pursuant to subsection (b) shall also enter into a written contract with the party that provides financing for a qualified project under the program to service the debt through assessments.

(d) If the program provides for local government financing, the written contract described in subsection (b) shall be a contract to finance the qualified project through assessments.

(e) The financing for assessments imposed may include:

(1) The cost of materials and labor necessary for the installation or modification of a qualified improvement;

(2) Permit fees;

(3) Inspection fees;

(4) Lender fees;

(5) Program application and administrative fees;

(6) Project development and engineering fees;

(7) Third-party review fees, including any applicable verification review fees, under § 68-204-109; and

(8) Any other fees or costs incurred by the property owner incident to the installation, modification, or improvement on a specific or pro rata basis, as determined by the local government.

68-204-105.

(a) The local government may designate an area as a region in which authorized local government officials and record owners of real property may enter into written contracts to impose assessments to repay the financing by owners of qualified projects on the owners' property and, if authorized by the local government program, to finance the qualified project.

(b) An area designated as a region by the local government:

(1) May include the entire local government; and

(2) Shall be located completely within the local government's jurisdiction.

(c) A local government may designate more than one (1) area as a region. If multiple regions are designated, the regions may be separate, overlapping, or coterminous.

68-204-106.

(a) To establish a PACE program under this chapter, the local government shall take action in the following order:

(1) Adopt a resolution of intent that includes:

(A) A finding that, if appropriate, the financing of qualified projects through contractual assessments is a valid public purpose;

(B) A statement that the local government intends to make contractual assessments to repay financing for qualified projects available to property owners;

(C) A description of the types of qualified projects that may be subject to contractual assessments;

(D) A description of the boundaries of the region;

(E) A description of any proposed arrangements for third-party financing to be available or any local government financing to be provided for qualified projects;

(F) A description of local government debt-servicing procedures if third-party financing is provided and assessments are collected to service a third-party debt;

(G) A reference to the report on the proposed program prepared pursuant to § 68-204-107, and a statement identifying the location where the report is available for public inspection;

(H) A statement of the time and place for a public hearing on the proposed program as required in subdivision (a)(2); and

(I) A statement identifying the appropriate local official and the county assessor of property for consulting about the collection of proposed contractual assessments with property taxes imposed on the assessed property;

(2) Hold a hearing for the public to comment on the proposed program, including the report required by § 68-204-107; and

(3) Adopt a resolution establishing the program and its terms, including:

(A) Each item included in the report as prescribed in § 68-204-107. The resolution may incorporate the report or the amended report by reference; and

(B) A description of each aspect of the program that may be amended, but only after a public hearing is held.

(b) Subject to the terms of the resolution establishing the program as provided in subdivision (a)(3)(A), the local government may amend a program by resolution.

(c) A local government may:

(1) Hire and set the compensation of a program administrator and program staff; or

(2) Contract for professional services necessary to administer a program.

(d) A local government may impose fees to offset the costs of administering a program. The fees authorized by this subsection (d) may be assessed as:

- (1) A program application fee paid by the property owner requesting to participate in the program;
- (2) A component of the interest rate on the assessment in the written contract between the local government and the property owner; or
- (3) A combination of subdivisions (d)(1) and (2).

68-204-107.

(a) The report for a proposed program as required pursuant to § 68-204-106 shall include:

- (1) A map showing the boundaries of the proposed region;
- (2) A form contract between the local government and the property owner specifying the terms of:
 - (A) Assessment under the program; and
 - (B) Financing provided by a third party or the local government, as appropriate;
- (3) A form contract between the local government and the third party regarding the servicing of the debt through assessments, if the proposed program provides for third-party financing;
- (4) A description of the types of qualified projects that may be subject to contractual assessments;
- (5) A statement identifying the local government official authorized to enter into written contracts on behalf of the local government;

(6) A plan for ensuring sufficient capital for third-party financing and, if applicable, raising capital for local government financing for qualified projects;

(7) If bonds will be issued to provide capital to finance qualified projects as part of the program, as provided by § 68-204-114:

(A) A maximum aggregate annual dollar amount for financing through contractual assessments, to be provided by the local government under the program;

(B) A method for ranking requests from property owners for financing through contractual assessments in order of priority, if the number of requests appears likely to exceed the authorization amount; and

(C) A method for determining:

(i) The interest rate and period during which contracting owners would pay an assessment; and

(ii) The maximum amount of an assessment;

(8) A method for ensuring that the period of the contractual assessment does not exceed the useful life of the qualified project that is the basis for the assessment;

(9) A description of the application process and eligibility requirements for financing qualified projects to be repaid through contractual assessments under the program;

(10) A method, as prescribed by subsection (b), for ensuring that property owners requesting to participate in the program demonstrate the

financial ability to fulfill financial obligations to be repaid through contractual assessments;

(11) A statement explaining the manner in which property will be assessed and how assessments will be collected;

(12) A statement explaining the lender notice requirement in § 68-204-108;

(13) A statement explaining the review requirement in § 68-204-109;

(14) A description of marketing and participant education services to be provided for the program;

(15) A description of quality assurance and anti-fraud measures to be instituted for the program; and

(16) The procedures for collecting the proposed contractual assessments.

(b) The method for ensuring a demonstration of financial ability under subdivision (a)(10) shall be based on appropriate underwriting factors, including:

(1) Verification that:

(A) The property owner requesting to participate in the program:

(i) Is the legal owner of the benefited property;

(ii) Is current on mortgage and property tax payments; and

(iii) Is not insolvent or in bankruptcy proceedings;

and

(B) The title of the benefited property is not in dispute; and

(2) Requiring an appropriate ratio of the amount of the assessment to the assessed value of the property.

(c) The local government shall make the report available for public inspection:

(1) On the local government's web site; and

(2) At the office of the official designated to enter into written contracts on behalf of the local government under the program.

68-204-108. Before a local government may enter into a written contract with a record owner of real property to impose an assessment to repay the financing of a qualified project, the holder of any mortgage lien on the property shall be given written notice of the owner's intention to participate in a PACE program at least forty-five (45) days before the date the written contract for assessment between the owner and the local government is executed. Any objection to the notice of intent shall specifically state the nature and basis of objection and the manner in which it impairs the interest of the holder of the mortgage lien.

68-204-109. After a qualified project is completed, the local government shall obtain verification that the qualified project was properly completed and is operating as intended. A verification of energy efficiency by the Tennessee valley authority (TVA) or a local power company shall satisfy the requirements of this section.

68-204-110. The proposed arrangements for financing a qualified project may authorize the property owner to:

(1) Purchase directly the related equipment and materials for the installation or modification of a qualified improvement; or

(2) Contract directly, including through lease, power purchase agreement, or other service contract, for the related equipment and materials used in the installation or modification of a qualified improvement.

68-204-111.

(a) A local government that authorizes financing through contractual assessments under this chapter shall file written notice of each contractual assessment in the records of the office of the county register of deeds of the county in which the property is located.

(b) The notice required pursuant to subsection (a) shall contain:

- (1) The amount of the assessment;
- (2) The legal description of the property;
- (3) The name of each property owner; and
- (4) A reference to the statutory assessment lien provided under this chapter.

68-204-112.

(a) A contractual assessment under this chapter and any interest or penalties on the assessment:

- (1) Is a first and prior lien against the real property on which the assessment is imposed, from the date on which the notice of contractual assessment is recorded pursuant to § 68-204-111, until the assessment, interest, or penalty is paid; and
- (2) Has the same priority status as a lien for any other ad valorem tax.

(b) The lien shall run with the land, and that portion of the assessment under the assessment contract that is not yet due shall not be eliminated by foreclosure of a property tax lien.

(c) The assessment lien may be enforced by the local government in the same manner that a property tax lien against real property may be enforced by the local government.

(d) Delinquent installments of the assessments shall incur interest and penalties in the same manner as delinquent property taxes.

(e) A local government may recover costs and expenses, including attorney's fees, in an action to collect a delinquent installment of an assessment in the same manner as in an action to collect a delinquent property tax.

68-204-113. The local government may contract with another local governmental entity, including a county assessor of property, to perform the duties of the local government relating to the collection of assessments imposed pursuant to this chapter.

68-204-114.

(a) A local government may issue bonds or notes to finance qualified projects through contractual assessments under this chapter.

(b) Bonds or notes issued pursuant to this section may not be general obligations of the local government. The bonds or notes shall be secured by one (1) or more of the following as provided by the local government in the resolution or the ordinance approving the bonds or notes:

(1) Payments of contractual assessments on benefited property in one (1) or more specified regions designated under this chapter;

(2) Reserves established by the local government from grants, bonds, net proceeds, or other legally available funds;

(3) Municipal bond insurance, lines of credit, public or private guaranties, standby bond purchase agreements, collateral assignments, mortgages, or any other available means of providing credit support or liquidity; or

(4) Any other funds lawfully available for purposes consistent with this chapter.

(c) A local government pledge of assessments, funds, or contractual rights in connection with the issuance of bonds or notes by the local government under this chapter is a first lien on the assessments, funds, or contractual rights pledged in favor of the person to whom the pledge is given, without further action by the local government. The lien is valid and binding against any other person, with or without notice.

(d) Bonds or notes issued pursuant to this chapter further an essential public and governmental purpose, including:

(1) Improvement of the reliability of the TVA and local power company electrical system, grid, and services through energy conservation and distributed generation;

(2) Conservation of state water resources consistent with the department of environment and conservation drought management plan and water conservation policies and programs;

(3) Reduction of energy costs;

(4) Economic stimulation and development;

(5) Enhancement of property values; and

(6) Enhancement of employment opportunities.

68-204-115.

(a) Any combination of local governments may agree to jointly implement or administer a program under this chapter.

(b) If two (2) or more local governments implement a program jointly, a single public hearing held jointly by the cooperating local governments is sufficient to satisfy the requirement of § 68-204-106(a)(2).

(c) One (1) or more local governments may contract with a third party, including another local government, to administer a program.

68-204-116. A local government that establishes a region shall not:

(1) Make the issuance of a permit, license, or other authorization from the local government to a person who owns property in the region contingent on the person entering into a written contract to repay the financing of a qualified project through contractual assessments under this chapter; or

(2) Otherwise compel a person who owns property in the region to enter into a written contract to repay the financing of a qualified project through contractual assessments.

SECTION 2. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act shall be severable.

SECTION 3. This act shall take effect January 1, 2016, the public welfare requiring it.